

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RHONDA T.,

Plaintiff,

V.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C23-5471

**ORDER AFFIRMING THE
COMMISSIONER'S DECISION**

Plaintiff seeks review of the denial of her application for Disability Insurance Benefits (DIB). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, the Court **AFFIRMS** the Commissioner's final decision and **DISMISSES** the case with prejudice.

BACKGROUND

Plaintiff was born in 1976, has a GED, and has worked as a receptionist. AR 81-86.
Plaintiff was last gainfully employed in June 2014. AR 82.

In May 2015, Plaintiff applied for benefits, alleging disability as of June 1, 2014. AR 15. Plaintiff's applications were denied initially and on reconsideration, and Plaintiff requested a hearing. AR 112-3. After the ALJ conducted a hearing on June 8, 2017, the ALJ issued a

1 decision finding Plaintiff not disabled. AR 12-23. On August 28, 2018, the Appeals Council
 2 denied her request for review, making the ALJ's decision the final decision of the Commissioner.
 3 AR 1-3. On October 25, 2018, Plaintiff appealed the decision to the U.S. District Court for the
 4 Western District of Washington. AR 533-5. On May 20, 2019, the Court entered an order
 5 reversing and remanding Plaintiff's claim for further proceedings. AR 541-550. On April 30,
 6 2020, the ALJ held a new hearing regarding Plaintiff's claim, and on July 8, 2020, the ALJ
 7 issued a decision finding Plaintiff not disabled. AR 459-474.

8 THE ALJ'S DECISION

9 Utilizing the five-step disability evaluation process,¹ the ALJ found:

10 **Step one:** Plaintiff has not engaged in substantial gainful activity since June 1, 2014.

11 **Step two:** Plaintiff has the following severe impairments: migraine headaches.

12 **Step three:** These impairments do not meet or equal the requirements of a listed
 13 impairment.²

14 **Residual Functional Capacity:** Plaintiff can perform a full range of work at all
 15 exertional levels but with the following non-exertional limitations. She could only
 16 occasionally climb ladders, ropes, or scaffolds. She could have only occasional exposure
 17 to hazards, bright lights, loud noise, vibration, and temperature/humidity extremes. She
 18 also could have only occasional exposure to pulmonary irritants like fumes and gases.

19 **Step four:** Plaintiff can perform past relevant work as a receptionist.

20 **Step five:** As there are jobs that exist in significant numbers in the national economy that
 21 Plaintiff can perform, Plaintiff is not disabled.

22
 23 AR 17-23.

¹ 20 C.F.R. §§ 404.1520.

² 20 C.F.R. Part 404, Subpart P., App. 1.

1 The Appeals Council denied Plaintiff's request for review, making the ALJ's decision the
2 Commissioner's final decision. AR 452-457. Plaintiff appealed the final decision of the
3 Commissioner to this Court. Dkt. 1.

LEGAL STANDARDS

Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social security benefits when the ALJ's findings are based on harmful legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a general principle, an ALJ's error may be deemed harmless where it is "inconsequential to the ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012) (cited sources omitted). The Court looks to "the record as a whole to determine whether the error alters the outcome of the case." *Id.*

12 Substantial evidence is “more than a mere scintilla. It means - and means only - such
13 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
14 *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (cleaned up); *Magallanes v. Bowen*, 881 F.2d
15 747, 750 (9th Cir. 1989). The ALJ is responsible for evaluating symptom testimony, resolving
16 conflicts in medical testimony, and resolving any other ambiguities that might exist. *Andrews v.*
17 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record
18 as a whole, it may neither reweigh the evidence nor substitute its judgment for that of the
19 Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is
20 susceptible to more than one rational interpretation, it is the Commissioner’s conclusion that
21 must be upheld. *Id.*

DISCUSSION

Plaintiff argues the ALJ erred by determining she did not meet or equal a listed impairment, misevaluating her testimony, and not including absence and time off-task limitations in the formation of her RFC. The Commissioner argues the ALJ's decision is free of harmful legal error, supported by substantial evidence, and should be affirmed.

A. The ALJ Did Not Err in the Step-Three Analysis

Plaintiff first argues that the ALJ erred in determining she did not meet or equal a listed impairment. Dkt. 9 at 6. Plaintiff contends that the severity of her symptoms that result from her migraine headaches “is analogous to one of the listed impairments and supported by the record and medical testimony.” Dkt. 9 at 6. The Commissioner argues that the law of the case doctrine precludes Plaintiff’s argument and that there is no merit to her argument because she did not support her claim with objective medical findings. Dkt. 12 at 3, 6. The law of the case doctrine applies in the social security context and “generally prohibits a court from considering an issue that has already been decided by that same court or a higher court in the same case” when the evidence on remand is substantially the same. *Stacy v. Colvin*, 825 F.3d 563, 567 (9th Cir. 2016) (citing *Hall v. City of Los Angeles*, 697 F.3d 1059, 1067 (9th Cir. 2012)).

In its 2019 order, the Court directly addressed Plaintiff's challenge to the ALJ's Step-Three determination, finding that "the ALJ did not harmfully err by failing to find Plaintiff's impairments medically equaled the listed impairment of epilepsy." AR 549. The Court also found that Plaintiff relied "entirely on her own testimony" and that there was "no evidence in the record showing Plaintiff's migraines cause alteration of consciousness or impair her abilities to stand, walk, or use her arms." AR 548-9. The Court, upon remand, instructed the ALJ to "reconsider Plaintiff's testimony, reevaluate the RFC if necessary, and proceed to steps four and

1 five as needed.” AR 550. Notably, the case was not remanded with instructions that the ALJ
 2 conduct an updated step-three analysis.

3 Plaintiff does not cite any evidence that was not part of the record when the Court
 4 remanded the matter in 2019. *See Dkt. 9 at 6-7.* (citing AR 19, 46-8, 236-47, 253-9, 290-1, 298,
 5 447, 449). The only new evidence Plaintiff cites is from her own hearing testimony in April
 6 2020. *See Dkt. 9 at 6.* (citing AR 492-3). To establish an impairment that meets or equals a
 7 listing, a Plaintiff must prove medical equivalence based on medical findings. *See SSR 86-8,*
 8 *available at 1986 WL 68636, at *3-4.* Because this step-three issue was previously decided by
 9 the Court and Plaintiff has not raised any new objective medical evidence, the law of the case
 10 precludes Plaintiff’s argument.

11 **B. The ALJ Did Not Err in Evaluating Plaintiff’s Symptom Testimony**

12 Plaintiff next argues that the ALJ erred in misevaluating her testimony. The ALJ
 13 explained he did not find Plaintiff’s testimony persuasive because: (1) Plaintiff’s allegations
 14 regarding the intensity, severity, and limiting effects of her symptoms was inconsistent with the
 15 medical evidence of record; (2) Plaintiff received only minimal and conservative treatment for
 16 her migraines and the medical evidence did “not show that she required aggressive migraine-
 17 related medical treatment or hospitalization during the period at issue;” and (3) Her activities
 18 contradicted her more severe allegations. AR 469-71. Absent evidence of malingering, an ALJ
 19 must provide clear and convincing reasons to discount a Plaintiff’s testimony. *See Burrell v.*
 20 *Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014). Plaintiff raises several challenges to the ALJ’s
 21 assessment of her allegations. The Court will address each in turn.

1 I. *Medical Records*

2 First, Plaintiff contends the ALJ erred by overly relying on the lack of support for her
3 allegations in the medical records because these only “provide snapshots of information” and her
4 statements about symptoms to providers were consistent. Dkt. 9 at 8-9. Notably, Plaintiff does
5 not challenge the ALJ’s determination that she received minimal conservative treatment, that she
6 was never hospitalized for her migraines, or that she was healthy and not in pain during any of
7 her doctor’s appointments. Rather, Plaintiff contends that “it beggars belief that she would attend
8 a doctor’s appointment while actively symptomatic.” Dkt. 9 at 10. While it is reasonable that a
9 person experiencing severe migraines would be unable to attend an appointment, the record has
10 no evidence that Plaintiff missed appointments due to her migraines or that she contacted
11 providers for help during migraine flare ups. Plaintiff also fails to challenge the ALJ’s finding
12 that her neurological findings were typically normal, or that she had negative medical imaging,
13 instead, she contends that “some conditions such as epilepsy need not be visible on medical
14 imaging” to establish disability. Dkt. 9 at 9.

15 The Commissioner cites the Ninth Circuit decision in *Britton v. Colvin*, 787 F.3d 1011,
16 1013–14 (9th Cir. 2015), wherein the Court affirmed the ALJ’s determination that substantial
17 evidence did not support including migraines because “there was no independent medical
18 evidence establishing that [Plaintiff] suffers from migraines three to four days a month, that
19 [Plaintiff] must rest when she gets them, and that they last for two to four hours, as [Plaintiff]
20 claimed.” And that, where medical opinions supported Plaintiff’s alleged debilitating migraines,
21 they “relied exclusively on [Plaintiff’s] testimony regarding the frequency, duration, and
22 intensity of her migraines,” and thus did not constitute substantial evidence. *Id.* Here, like
23

1 *Britton*, Plaintiff relies exclusively on her symptomatic testimony to medical providers without
 2 citing independent medical evidence.

3 Plaintiff has not shown harmful legal error in the ALJ's determination that her testimony
 4 was inconsistent with her healthy appearance and lack of distress during appointments, her
 5 benign imaging results, her conservative treatment, and her decision not to try other medications
 6 or treatments during the relevant period.

7 2. *Activities*

8 Second, Plaintiff argues that the ALJ erred in determining that her ability to care for her
 9 children discounted her credibility and that "due to [Plaintiff's] headaches, raising her children
 10 has been particularly difficult for her, and she has been unable to do so alone." Dkt. 9 at 10.
 11 Plaintiff testified that her husband frequently stays home or leaves work to manage the
 12 household during her migraines, and her husband submitted leave statements supporting that
 13 claim. AR 469. But the time sheets her husband submitted do not corroborate the intensity or
 14 duration of incapacitating symptoms that Plaintiff alleges. And, as the ALJ found, there is no
 15 record that Plaintiff reported this level of debilitation during treatment visits. Further, none of
 16 Plaintiff's providers indicated a medical need for her to "have another adult present to help [her]
 17 function, tend to her personal care, tend to her children's care, or tend to basic activities of
 18 living." AR 469.

19 Third, Plaintiff contends that "the ALJ's decision clearly commits an error in assessing
 20 [Plaintiff's] capabilities regarding her activities of daily living." Dkt. 9 at 10. But, as Plaintiff
 21 contends in her opening brief, she has migraines "once a week, and they last for several days
 22 [during which] she has nausea and vomiting and photophobia...[and her migraines] are set off by
 23 lack of sleep or flashing lights." Dkt. 9 at 9 (citing AR 290). During her migraines, Plaintiff

1 asserts she is limited in her “ability to sleep, bend, walk, see, concentrate, understand,
2 comprehend instructions, leave her house, perform self-care, perform activities of daily living,
3 and function in general.” AR 466. Plaintiff contends looking at her phone “kills” her eyes even
4 if she dims the light setting and uses a blue filter, but she uses her phone routinely. AR 469. She
5 claims bright lights trigger her migraines, but she had no flare ups during medical appointments.
6 AR 469. Additionally, her neurologist advised her to spend “20 minutes a day in the sun,” and
7 Plaintiff reported “that she went outside on a daily basis unless she was already experiencing a
8 migraine.” AR 469. The ALJ thus reasonably considered that if “her migraines were triggered
9 so routinely and so significantly by bright lights, [she] would have avoided going outside on a
10 daily basis and using a computer,” and she would have experienced migraine flare ups “as a
11 result of being in the office lighting at medical treatment facilities.” AR 469-470. Plaintiff did
12 not assign error to this finding and has not shown that the ALJ overlooked any particular
13 evidence related to her light sensitivity.

14 The ALJ also found Plaintiff’s contention that her migraines made her unable to drive
15 and were unpredictable was inconsistent with her testimony that she drives a car and goes out
16 alone. Specifically, the ALJ found that driving requires an individual to multitask, exposes them
17 to flashing bright lights, and requires them to make fast decisions; and that Plaintiff’s “ability to
18 go out alone and drive a car – when by her own report, the onset of her severe migraines was so
19 unpredictable – suggest that her migraines and related symptoms were not as debilitating or as
20 limiting as they were asserted to have been.” AR 470. Plaintiff, as with the prior issue, did not
21 assign error to this finding and has not shown that the ALJ overlooked any particular evidence
22 related to her capacity to drive.

1 For all of these reasons, the Court finds that substantial evidence supports the ALJ's
 2 decision and Plaintiff has failed to establish harmful legal error in the ALJ's assessment of her
 3 allegations.

4 **C. The ALJ Did Not Err in Assessing the RFC**

5 The ALJ asked the vocational expert if Plaintiff would be able to sustain employment if
 6 they missed one day of work a month, required an additional 15 or 20 minute break each
 7 workday, or were consistently off task 15 percent of the day, to which the vocational expert
 8 replied, "none of those scenarios would be compatible with sustained employment." AR 502.
 9 Plaintiff contends the ALJ erred by not including the time off task and absence limitations that
 10 the ALJ posed in their second hypothetical to the vocational expert. Dkt. 9 at 11.

11 Residual Functional Capacity is the most a claimant can do despite limitations and is
 12 assessed based on all relevant evidence in the record. 20 C.F.R. §§ 404.1545(a)(1). An RFC
 13 must include all of the claimant's functional limitations supported by the record. *See Valentine*
 14 *v. Comm'r of Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009). The Commissioner is
 15 responsible for "translating and incorporating clinical findings into a succinct RFC." *Rounds v.*
 16 *Comm'r of Soc. Sec. Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015) (citing *Stubbs-Danielson v.*
 17 *Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008)).

18 The ALJ found that Plaintiff's migraines could reasonably be expected to cause some of
 19 the Plaintiff's alleged symptoms. However, the ALJ found that the Plaintiff's statements
 20 concerning the intensity, persistence, and limiting effects of these symptoms was not consistent
 21 with or supported by the longitudinal record. AR 470-1. In challenging the RFC, Plaintiff relies
 22 only on her testimony that her migraines require her to go home early, appear without warning,
 23 and prevent her from focusing on simple tasks or managing her household. Dkt. 9 at 11-13. As

1 explained *supra*, the ALJ did not err in discounting Plaintiff's testimony. Specifically, the ALJ
2 discounted Plaintiff's opined difficulties related to staying on-task, independently performing
3 activities of daily living, and attending work because: (1) Plaintiff did not mention this "level of
4 debilitation during her treatment visits;" (2) None of the treatment providers indicated she had a
5 medical need for another adult to be present to help her function; (3) Her testimony was
6 inconsistent with her September 2018 report that "she had not missed any work or school, and
7 had not had to cancel any plans, in the past month due to headaches or migraines;" and (4) Her
8 testimony was inconsistent with her March 2019 report that "she was feeling well, had good
9 sleep habits, had healthy personal habits, was able to exercise, was able to perform all normal
10 functions of daily living, had no insomnia, and had no other neurological symptoms." AR 469-
11 70. Plaintiff's conclusory statement that "the record clearly demonstrates additional limitations,
12 other than environmental limitations, are required to adequately capture the scope of [Plaintiff's]
13 condition and resulting limitations" does not adequately assign error to the ALJ's findings.

14 The ALJ evaluated the evidence, determined the RFC, and included specific aggravating
15 and environmental factors as restrictions. Substantial evidence supports the ALJ's
16 determination, and Plaintiff has not shown the ALJ committed harmful legal error.

17 **CONCLUSION**

18 For the reasons set forth above, the Commissioner's final decision is **AFFIRMED** and
19 this case is **DISMISSED** with prejudice.

20 Dated this 8th day of November, 2023.

21 
22 S. KATE VAUGHAN
23 United States Magistrate Judge